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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204259
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Serial Nos. 77/948,333; 77/948,895; 85/310,089

Applicant's Marks: VALHALLA GAME STUDIOS; VALHALLA GAME STUDIOS and Design;  
VALHALLA ENTERTAINMENT

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VALHALLA MOTION PICTURES, INC.,

Opposer;

v.

Opposition No. 91204259  
(parent case)

VALHALLA GAME STUDIOS CO. LTD.,

Applicant.

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VALHALLA GAME STUDIOS CO. LTD.,

Opposer;

v.

Opposition No. 91206662

VALHALLA MOTION PICTURES, INC.,

Applicant.

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**APPLICANT'S RESPONDING BRIEF IN CHILD CASE**

Applicant Valhalla Motion Pictures, Inc. ("VMP"), owner of the VALHALLA MOTION PICTURES & Viking Ship Design (U.S. Reg. No. 4212384) and VALHALLA TELEVISION & Viking Ship Design (U.S. Reg. No. 4238523) trademarks, hereby submits its brief in response to Valhalla Game Studio Co. Ltd's ("VGS") opening brief in opposition to VMP's application to register the VALHALLA ENTERTAINMENT & Viking ship Design trademark:



(the "VALHALLA ENTERTAINMENT Mark").

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## **INTRODUCTION**

In response to VMP opposing VGS's applications to register VALHALLA GAME STUDIOS and VALHALLA GAME STUDIOS & Viking Ship Design, VGS has opposed VMP's application to register VALHALLA ENTERTAINMENT. Interestingly, VGS asserts as the basis for its opposition a likelihood of confusion while at the same time denying that likelihood of confusion exists in the parent case. As the evidence below will make clear, VMP has priority over VGS in both the parent and child cases, and there is likelihood of confusion in both cases because of the strong similarity of the marks and closely related goods and services in the same channels of trade and targeting the same customers. VGS is an intent-to-use applicant that is seeking to trade off the reputation and good will of the senior user, VMP. The Oppositions in the parent case should be sustained and the Opposition in the child case should be dismissed to protect VMP's longstanding investment in its brands and to prevent consumers from mistakenly associating VGS and its product when it comes to market with VMP and its well-known entertainment products.

## **STATEMENT OF THE ISSUES**

The issues for trial in the two pending Oppositions are:

1. In the parent case, whether the public is likely to be confused, mistaken, or deceived as to the source of the goods and services that VGS proposes to offer under VALHALLA GAME STUDIOS and VALHALLA GAME STUDIOS & Viking Ship Design; and
2. In the child case, whether the application of VMP for VALHALLA ENTERTAINMENT & Viking Ship Design should issue.<sup>1</sup>

## **DESCRIPTION OF THE RECORD**

Pursuant to Trademark Rule 2.122(b), the record includes VMP's and VGS's respective application files and the pleadings.

VMP has submitted the following evidence:

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<sup>1</sup> Pursuant to the Board's order of August 23, 2014, this brief concerns only the second issue, *i.e.*, whether VGS's opposition to registration of VALHALLA ENTERTAINMENT & Viking Ship Design should be sustained.

1. Testimonial deposition, with exhibits attached, of Ben Roberts (VMP's former Creative Executive and Vice President), taken on December 9, 2013 (Doc. # 39).
2. Testimonial deposition, with exhibits attached, of Phillip Kobylanski (VMP's Creative Executive), taken on December 10, 2013 (Doc. # 40).
3. Testimonial deposition, with exhibits attached, of Julie Thomson (VMP's Chief Financial Officer), taken on December 10, 2013 (Doc. #41).
4. Testimonial deposition, with exhibits attached, of Gale Anne Hurd (VMP's founder and Chief Executive Officer), taken on December 10, 2013 (Doc. # 42)
5. Testimonial deposition, with exhibits attached, of Phillip Kobylanski, taken on October 28, 2014 (Doc. # 50).
6. First Notice of Reliance, copies of certificates of registration and TSDR printouts of U.S. Registrations for VALHALLA MOTION PICTURES & Viking Ship Design and VALHALLA TELEVISION & Viking Ship Design (Doc. # 22).
7. Second Notice of Reliance, Exhibits 1-2, consisting of printed internet website pages (Doc. # 22).
8. Third Notice of Reliance, Exhibits 1-24, consisting of printed internet website pages (Doc. # 43).
9. Fourth Notice of Reliance, Exhibits 1-14, consisting of printed internet website pages (Doc. # 44).
10. Fifth Notice of Reliance, Exhibits 1-10, consisting of printed internet website pages (Doc. # 45).
11. Sixth Notice of Reliance, Exhibit 1, consisting of printed internet website pages (Doc. # 46).

VGS has submitted the following evidence:<sup>2</sup>

1. Testimonial depositions, with exhibits attached, of Satoshi Kanematsu and Mitsuru Tsutsumi (VGS executives), taken on June 4, 2014 (Doc. # 27).
2. Testimonial deposition, with exhibits attached, of James Huntley (former marketing director of video game publisher THQ), taken on September 22, 2014 (Doc. # 47).
3. First Notice of Reliance, Exhibits 1-22 consisting of printed internet website pages (Doc. # 31).
4. Second Notice of Reliance, Exhibits 1-34, consisting of copies of certificates of registration and TSDR printouts of U.S. Trademark registrations (Doc. # 32).
5. Third Notice of Reliance, Exhibits 1-19, consisting of copies of certificates of registration and TSDR printouts of U.S. Trademark registrations (Doc. # 33).
6. Fourth Notice of Reliance, Exhibits 1-54, consisting of copies of certificates of registration and TSDR printouts of U.S. Trademark registrations (Doc. # 34).
7. Fifth Notice of Reliance, Exhibits 1-3, consisting of copies of certificates of registration and TSDR printouts of U.S. Trademark registrations (Doc. # 35).
8. Sixth Notice of Reliance, Exhibits 1-32, consisting of copies of certificates of registration and TSDR printouts of U.S. Trademark registrations (Doc. # 36).
9. Seventh Notice of Reliance, Exhibits 1-4, consisting of excerpts and exhibits from the discovery depositions of Gale Anne Hurd (taken April 11, 2013), Kristopher Henigman (taken May 29, 2013), Julie Thomson (taken May 30, 2013), and Ben Roberts (taken July 15, 2013) (Doc. # 37).
10. Eighth Notice of Reliance, Exhibits 1-22, consisting of printed internet website pages (Docket # 38),
11. Ninth Notice of Reliance, Exhibit 1, consisting of an internet web page and video (Doc. # 48).

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<sup>2</sup> VMP does not concede the relevance or admissibility of evidence submitted by VGS. VMP reserves the right to object to evidence offered by VGS in support of its brief as defendant in the parent case and its brief as plaintiff in the child case.

12. Tenth Notice of Reliance, Exhibits 1-2, consisting of internet web pages and videos (Doc. # 49).

### **THE FACTS**<sup>3</sup>

#### **I. THE PARTIES.**

##### **A. Valhalla Motion Pictures (“VMP”).**

Valhalla Motion Pictures is a motion picture, television, comic book, and transmedia development and production company owned and operated by entertainment industry veteran Gale Anne Hurd, who produced and co-wrote the iconic film *Terminator* and produced the film *Aliens*.<sup>4</sup> (Doc. # 42 at 5, 8 & 14). “Transmedia” refers to the characteristic of certain creative works to be exploited across a range of media, such as comic books, motion pictures, television series, video games, and tangible products like play action figures, clothing and children’s lunchboxes. (Doc. #42 at 5-6).

VMP’s business is to acquire the intellectual property rights of stories and characters within the action and science fiction genres for development in a variety of entertainment media. (Doc. #42 at 5-6). The VALHALLA MOTION PICTURES & Viking Ship Design, VALHALLA TELEVISION & Viking Ship Design, and VALHALLA ENTERTAINMENT & Viking Ship Design have appeared in the United States and worldwide on some of the most successful motion picture and television programs over the past 20 years, including the blockbuster motion picture *Armageddon* (1998) and the popular films *Virus* (1999), *Clockstoppers* (2002), *Hulk* (2003), *The Punisher* (2004), and *Aeon Flux* (2005). (Doc. #40, Exh. 51). VMP’s television show *The Walking Dead* (2010-present) attracts more than 16 million viewers and is one of the most viewed series on cable television in the United States. (Doc. # 40 at 8 & Exh. 51; Doc. # 44, Exh. 13, Doc. # 45, Exh. 1). VMP also has published popular comic books *Anti*, *Dead Man’s Run*,

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<sup>3</sup> These facts are presented for convenience to the reader. They were previously recited in VMP’s opening brief in the parent case.

<sup>4</sup> Hurd is a former governor of the Academy of Motion Picture Arts and Sciences (the “Academy”) and currently serves on the Academy’s Science & Technology Council. (Doc. # 43, Exhs. 15-16). She received a star on the Hollywood Walk of Fame in 2012. (Doc #43, Exh. 19). In January 2015, she received the prestigious David O. Selznick Achievement Award from the Producers Guild of America in recognition of her lifetime achievements in entertainment, particularly in the action and science fiction genres. (Doc. # 45, Exh. 9-10).



and *The Scourge*. (Doc. # 40, Exh. 51; Doc. # 42 at 15-16). VMP estimates that domestic box office receipts for its films alone has exceeded \$500 million over more than 15 years. (Doc # 41 at 14).

Since at least as early as 2006, VMP expanded its brand from major motion picture production into other media, anticipating the industry trend to exploit transmedia properties. (Doc. # 42 at 15-17; Doc. # 43 at 7-8; Doc. # 40 at 19-21). By identifying and developing intellectual property rights to entertainment properties that can be exploited in movies, television, novels, comic books, web series, and video games, VMP is able to reach larger audiences on a variety of entertainment platforms. To execute this business plan, VMP's staff members regularly attend and make presentations at worldwide video game and technology conferences and multi-genre entertainment industry events, including Comic-Con, the Consumer Electronics Show in Las Vegas, and E3 in Los Angeles to promote VMP's brand, identify potential new partners, and develop business opportunities. (Doc. # 42 at 16-28; Doc. # 40 at 10-14; Doc.# 50 at 6-7, 24-25).

VMP's staff has sought opportunities to adapt VMP's intellectual property into video games or to acquire intellectual property for development in connection with video games. For example, in 2008, VMP had discussions with Electronic Arts, one of the world's largest video game publishers, about potential development projects. (Doc. # 43 at 9-12). In 2009, VMP communicated with Sega about adapting properties for video games and also met with talent agents who specialize in video game content and video game publishing. (Doc. # 43 at 14-19). In 2010, VMP attended E3, one of the largest video game conferences in the world, and subsequently discussed development opportunities with Konami. (Doc. # 43 at 20-24). In 2010, Valhalla also met with video game publisher THQ to discuss developing original intellectual property into video games. (Doc. # 43 at 25-26). Similar efforts continue to the present day. (Doc. # 43 at 26-36; Doc. # 50 at 6-10).

Although VMP's Valhalla brand has not yet appeared on any video games, several entertainment properties developed by VMP and bearing VMP's distinctive brand have been turned into successful

video games, including *The Walking Dead*<sup>5</sup> (Doc. # 47 at 42-43), *Aeon Flux* (Doc. # 42 at 32-33), *Hulk* (Doc. # 42 at 33-35) and *The Punisher*. In fact, *The Punisher* video game was published by THQ, which subsequently worked with VGS on the video game *Devil's Third* prior to THQ's bankruptcy. (Doc. # 42 at 30; Doc. # 47 at 28). By contract, VMP sometimes receives a percentage of revenues based on merchandise, including video games, that are based on VMP's transmedia property productions. (Doc. # 41 at 18-20).

VMP uses its brands on the transmedia that it produces, which are seen by millions of viewers, and VMP also promotes itself to tens of thousands of members of the public online via social networks like Facebook ([facebook.com/ValhallaEntertainmentInc](https://facebook.com/ValhallaEntertainmentInc)) and Twitter (@ValhallaPics) and through its website ([valhallamotionpictures.com](http://valhallamotionpictures.com)) and its blog ([valhallaentertainment.wordpress.com](http://valhallaentertainment.wordpress.com)). (Doc. # 42 at 35-38; Doc. # 43, Exhs. 1-9). News regarding VMP's business also is regularly published in leading entertainment media outlets like *The Hollywood Reporter*, *Deadline*, *Variety*, and *Los Angeles Times*, where VMP is commonly identified as VALHALLA, VALHALLA MOTION PICTURES, VALHALLA ENTERTAINMENT, and VALHALLA TELEVISION. (See, generally, Doc. # 22, 43, 44, 45, 46).

B. Valhalla Game Studios.




VGS was purportedly founded in 2008. (Doc. # 27 (Kanematsu) at 7). VGS intends to produce video games and video game merchandise, but it has not sold any Valhalla branded video games. (*Id.* at 8-9). In 2010, video game publisher THQ assisted VGS in developing a violent action video game to be named *Devil's Third*, which was not completed. (Doc. # 47 at 28, 32-34). VGS-branded video games have not been released in the United States. VGS's founder testified that he attended E3 in Los Angeles and a convention in Germany and that VGS has engaged in pre-advertising for an anticipated release of the *Devil's Third* video game. The pre-advertising has been in print and online gaming magazines, and online at youtube.com and facebook.com. (Doc. #27 (Kanematsu) at 12-13).

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<sup>5</sup> *The Walking Dead* is an excellent example of a "transmedia" project. It began as a comic book about a post-apocalyptic world with zombies, then was adapted for television, and now is part of a very successful video game franchise and web series. (Doc. #42 at 6-7; Doc. # 40 at 8-9).

## II. THE MARKS.

VMP owns and uses the following service marks in connection with its business (the “Valhalla Marks”):


	<p>Reg. No. 4,212,384<sup>6</sup></p> <p>Filed: May 2, 2011</p> <p>Registered: Sept. 25, 2012</p>	<p>IC 41: Motion picture film production</p> <p>First use: 1997</p>
	<p>Reg. No. 4,238,523</p> <p>Filed: May 2, 2011</p> <p>Registered: Nov. 6, 2012</p>	<p>IC 41: Television show production.</p> <p>First use: 2012</p>
	<p>Serial No. 85/310,089</p> <p>Filed: May 2, 2011</p>	<p>IC 41: (Based on Use in Commerce) motion picture film production and television show production. First Use: 2010</p> <p>IC 41: (Based on Intent to Use) writing and editing scripts, teleplays and screenplays for others.</p>

The Valhalla Marks and common law trademarks VALHALLA MOTION PICTURES, VALHALLA ENTERTAINMENT, or VALHALLA TELEVISION typically appear in the credits of a motion picture, television, or other entertainment properties that VMP develops or produces, as well as on the cover and inside VMP’s comic books, and on VMP’s business proposals and agreements. (Doc. # 50 at 22; Doc. # 42, Exh. 66 & 71; Doc. # 41, Exhs. 50, 60 & 62).

VGS has sought registration of the following marks on an intent-to-use basis (the “VGS Marks”):

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<sup>6</sup> The composite mark and the word mark VALHALLA MOTION PICTURES were registered in 2000 by VMP’s predecessor (Reg. Nos. 2,389,038 and 2,384,466, respectively), but the registrations lapsed for inadvertent failure to file a statement of use. (Doc. # 50, Exhs. 103 & 104).

VALHALLA GAME STUDIOS	<p>Serial No. 77/948,333</p> <p>Filed: March 2, 2010</p>	<p>IC 9: Computer game programs; Computer game software; Computer software, namely, game engine software for video game development and operation; Video game software.</p> <p>IC 16: Printed materials, namely, novels and series of fiction books and short stories featuring scenes and characters based on video games; Series of computer game hint books.</p> <p>IC 28: Positionable toy figures; Toy action figures.</p> <p>IC 42: Design and development of computer game software and virtual reality software.</p>
	<p>Serial No. 77/948,895</p> <p>Filed: March 2, 2010</p>	<p>IC 9: Computer game programs; Computer game software; Computer software, namely, game engine software for video game development and operation; Video game software.</p> <p>IC 16: Series of computer game hint books and strategy guides; printed materials, namely, novels and series of fiction books, comic books and short stories featuring scenes and characters based on video games.</p> <p>IC 28: Positionable toy figures; Toy action figures.</p> <p>IC 42: Design and development of computer game software and virtual reality software.</p>

## ARGUMENT

### **I. STANDING AND PRIORITY.**

VMP does not dispute that VGS has a real interest in the outcome of the proceeding and a reasonable belief that its rights would be damaged as a result of registration. 15 U.S.C. § 1063(a); *Ritchie v. Simpson*, 170 F.3d 1092, 1094-95, 50 U.S.P.Q.2d 1023 (Fed. Cir. 1999).

VGS, however, lacks priority of use that is required to oppose VMP's registration. The Lanham Act prohibits registration of a mark that would be likely to cause confusion, mistake or deception based on a registered mark *previously used* in the United States by another and not abandoned. 15 U.S.C. § 1052(d). VGS's mark is not registered, and its pending applications were filed *after* VMP began using VALHALLA ENTERTAINMENT as a brand. Moreover, VMP's use of VALHALLA MOTION PICTURES & Viking Ship Design precedes the filing of VGS's intent-to-use application by more than a decade.

VGS's Opposition relies exclusively upon its intent-to-use applications for VALHALLA GAME STUDIOS and VALHALLA GAME STUDIOS & Viking Ship Design, both of which were filed on March 2, 2010 and are subjects of the opposition proceeding in the parent case. VGS may claim constructive priority use as of the date it filed its intent-to-use applications. 15 U.S.C. § 1057(c).

Although VMP's trademark application claims a first use date of October 2010, it is undisputed that VALHALLA ENTERTAINMENT was used in interstate commerce as early as **January 10, 2010**, when VALHALLA ENTERTAINMENT & Viking Ship Design appeared in the closing credits of the nationally broadcasted television movie *The Wronged Man*. (Doc. #40, Exh 51). Because VMP's actual use predates VGS's constructive use date of **March 2, 2010**, VMP has priority based on first commercial use. As of the date of the filing of this brief, VGS has not filed a Statement of Use of either mark in connection with its applications.

An intent-to-use applicant also may rely on use analogous to trademark use prior to the constructive use date of the intent-to-use application. *The Wet Seal, Inc. v. FD Mgmt., Inc.*, 2007 WL 458529, \*5, 82 U.S.P.Q.2d 1629 (TTAB 2007). Use analogous to trademark use must be of "such a

nature and extent as to create an association of said [term] with a single source . . . sufficient to create a proprietary right in the user deserving of protection.” *Era Corp. v. Electronic Realty Associates, Inc.*, 1981 WL 40496, \*13, 211 U.S.P.Q. 734 (TTAB 1981). In other words, VGS must prove that it has established a trade identity with respect to the cited marks. *Otto Roth & Co., Inc. v. Universal Foods Corp.*, 640 F.2d 1317, 1321-22 (CCPA 1981).

Here, there is no allegation (and no evidence) that prior to January 10, 2010, VGS had commenced commercial use of its cited marks analogous to trademark use. Likewise, there is no evidence (or argument) that any un-alleged prior use of the cited marks was significant enough to create a single-source association with VGS in the minds of consumers that causes VGS to “leapfrog” over VMP’s *actual prior* commercial use for purposes of establishing priority. There simply is no basis to conclude that VGS possessed any trade identity in the United States based on any trademark prior to January 2010, when VMP began commercial use of VALHALLA ENTERTAINMENT.

VGS has thus failed to meet its burden of proving that it possessed a proprietary interest in the cited marks prior to VMP’s first commercial use of VALHALLA ENTERTAINMENT. The lack of priority is fatal to VGS’s Opposition.

## **II. LIKELIHOOD OF CONFUSION.**

### **A. Legal Standard.**

The Board’s determination of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357 (CCPA 1973) (“*du Pont*”): (1) the similarity of the marks; (2) the similarity of the goods designated in the application to the goods with which the prior mark or family is associated; (3) the respective channels of trade; (4) the conditions of sale and the intended customers; (5) the strength and scope of the prior mark or family; (6) the number and nature of similar marks in use on similar goods; and (7) any evidence of actual confusion or the absence thereof; (8) the length of time and conditions under which there has been concurrent use without evidence of actual confusion; (9) the variety of goods on which the mark is or is not used (house mark, “family” mark, product mark); (10) the market interface

between applicant and the owner of a prior mark; (11) the extent to which applicant has the right to exclude other from use of the mark on its goods; (12) the extent of potential confusion; and (13) any other established fact probative of the effect of use.

“[N]ot all of the *du Pont* factors may be relevant or equal weight in a given case, and any one of the factors may control a particular case.” *In re Majestic Distilling*, 315 F.3d 1311, 1315, 65 U.S.P.Q.2d 1201 (Fed. Cir. 2003). Also, “while [the Board] must consider each factor for which it has evidence, [it] may focus its analysis on dispositive factors, such as similarity of the marks and relatedness of the goods [and services].” *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336 (Fed. Cir. 2001).

Additionally, any doubt as to the similarity of the marks is resolved against the junior user. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65 (Fed. Cir. 1988); *see Interstate Brands Corp.*, 2000 WL 187204, \*6, 53 U.S.P.Q.2d 1910 (TTAB 2000) (“[O]ne who adopts a mark similar to the mark of another for the same or closely related goods or services does so at his own peril, and any doubt as to the similarity of the marks must be resolved against him.”).

**B. VGS Lacks Priority.**

As noted above, VGS does not have actual or constructive priority of any mark in the United States. Therefore, it cannot satisfy the threshold requirement of Section 2(d) of the Lanham Act and on that basis alone the Opposition should be denied.

**C. The Likelihood of Confusion Factors.**

VGS did not analyze any of the relevant *du Pont* factors to show a likelihood of confusion; it merely concludes that there is a “strong likelihood of confusion between the VALHALLA ENTERTAINMENT mark and marks used by the existing ‘Valhalla’ companies, including VGS[,]” but offers absolutely no supporting analysis.<sup>7</sup> VGS apparently seeks to draw attention from the awkward fact that in one breath it claims that there is no likelihood of confusion between VMP’s VALHALLA MOTION PICTURES, VALHALLA MOTION PICTURES & Viking Ship Design, and VALHALLA

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<sup>7</sup> No third party has opposed registration of the VALHALLA ENTERTAINMENT Mark. VMP objects to the extent that VGS is purporting oppose registration on behalf of unidentified third parties.

TELEVISION, on the one hand, and VGS's VALHALLA GAME STUDIOS and VALHALLA GAME STUDIOS & Viking Ship Design, on the other hand, and in the next breath insists that VALHALLA GAME STUDIOS and VALHALLA ENTERTAINMENT are confusingly similar. Instead, VGS contends confusedly that VMP is claiming a "theoretical" zone of expansion to "monopolize" the "Valhalla" name in the entertainment industry. This contention, however, is not a legal basis for opposing the application -- even if VGS had priority, which it does not.

Besides not being dispositive of whether an Opposition should be sustained, VGS's "zone of expansion" argument is misplaced. The "natural zone of expansion" doctrine discussed by VGS refers a right held by a senior user of a mark to prevent others from using the same or similar mark on goods or services that consumers might reasonably expect to come from the senior user in the "normal expansion of business under the mark."<sup>8</sup> *Mason Eng'g & Design Corp.*, 1985 WL 72027, \*6, 225 U.S.P.Q. 956 (TTAB 1985). This doctrine is concerned with consumer confusion generated by the actual or potential expansion of the goods or services offered under the senior user's existing mark, not whether the senior user can adopt a *new* mark to use in connection with existing (or even new) goods and services. *See id.* (describing the factors to be considered when evaluating whether expansion is natural).

Here, VMP seeks to register the VALHALLA ENTERTAINMENT Mark in connection with motion picture film production and television show production, and for writing and editing scripts, teleplays and screenplays for others. VMP's application was filed in May 2011 and its first commercial use was as early as January 2010.<sup>9</sup> (Doc. #40, Exh 51). This application is not based on a claim of "expanding" in the future goods or services to be offered under the VALHALLA ENTERTAINMENT Mark.<sup>10</sup> Contrary to VGS's assertion, VMP is not seeking a registration that will cover "a variety of

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<sup>8</sup> By raising the "zone of expansion" argument, VGS impliedly concedes that VMP has priority with respect to the term "Valhalla" as used in connection with entertainment production services.

<sup>9</sup> The Statement of Use alleges a first use as of October 2010, but in discovery, an earlier use was established.

<sup>10</sup> VMP owns registrations VALHALLA MOTION PICTURES & Viking ship Design (Reg. No. 4212384) and VALHALLA TELEVISION & Viking ship Design (Reg. No. 4238523) for motion picture film production and television show production, respectively.



classes for ‘transmedia’ and tangible products like play action figures, clothing and children's lunchboxes” (Brief at 11), but only with the services identified in its application, namely motion picture film production, television show production, and writing and editing scripts, teleplays and screenplays for others.

VGS has failed to articulate *any* reason, let alone a valid reason, why VMP’s application for registration should not be granted. It has completely ignored the likelihood of confusion analysis that governs the Board’s determination of this Opposition. One suspects that VGS’s decision not to articulate grounds for likelihood of confusion is premised upon its fear that such grounds would be equally applicable and thus used against VGS in the parent case, in which VGS strenuously denies that there could be a likelihood of confusion between VALHALLA MOTION PICTURES and VALHALLA GAME STUDIOS for very similar entertainment products. Whatever the cause for the curious absence of analysis, VGS’s trial brief falls far short of what is required by evidence and legal argument to sustain an opposition to an application for registration of a mark.

### **CONCLUSION**

This child case is an opposition that should never have been brought, as it is lacking any factual basis and proposes no valid legal argument to support sustaining an opposition. Whatever the reason for VGS’s paradoxical contention that its mark, VALLHALLA GAME STUDIOS, is not likely to be confused with the prior mark VALHALLA MOTION PICTURES but is likely to be confused with the prior mark VALHALLA ENTERTAINMENT, there is no cognizable basis for sustaining VGS’s opposition, and thus the Board should dismiss it with prejudice.

Respectfully submitted,  
/s/ Pamela D. Deitchle

Dated: March 16, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 16, 2015, a true and complete copy of the foregoing  
APPLICANT'S RESPONDING BRIEF IN CHILD CASE has been served on Opposer by electronic mail  
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